

REPORT
OF THE
SECRETARY OF WAR;

BEING PART OF
THE MESSAGE AND DOCUMENTS

COMMUNICATED TO THE
TWO HOUSES OF CONGRESS
AT THE
BEGINNING OF THE FIRST SESSION OF THE FIFTIETH CONGRESS.

IN FOUR VOLUMES.

VOLUME II.
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IN THE SENATE OF THE UNITED STATES.

APRIL 20, 1870.—Ordered to be printed.

Mr. PRATT, from the Committee on Claims, submitted the following

REPORT.

The Committee on Claims, to whom was referred the memorial of Annie B. Ross, daughter and executrix, and William P. Ross, successor and executor of John Ross, deceased, late principal chief of the Cherokee nation, praying compensation to the amount of \$66,437 88, for losses sustained in the destruction, abstraction, and appropriation of the property of the deceased during the war of the rebellion, submit the following report:

On the 16th day of June, 1866, the late John Ross, while in the city of Washington, made out and swore to an itemized account against the United States for the sum of \$53,150 31, for property lost and destroyed during the war, and principally in 1863, to which he added the following item:

“Damages on \$53,150 31 property at 25 per cent., \$13,287 57 $\frac{3}{4}$.”

The sum total of his claim, with this addition, was \$66,437 88, and is made up of eighty-two items. They consist in the main of the destruction of his dwelling, outhouses, fences, and fixed improvements generally, his orchards and growing crops, farm products, farming implements, household furniture, library, works of art, &c., on October 29, 1863, together with the loss of a large amount of live stock. His farm was situate in the Indian country, at a place called Park Hill, where, as the executive head of the Cherokee nation, he had lived in ease and comparative splendor for many years. During the course of a long life he had accumulated wealth and surrounded himself with all the conveniences of modern civilization. He was himself a cultivated man, and with rare wisdom and tact had managed the affairs of his people, as their chief, for near half a century. As early as the year 1819, as one of the chief men of his tribe, he had negotiated a treaty with John C. Calhoun, then Secretary of War, representing the government.

When the war of the rebellion broke out, his nation held many slaves. They were of southern origin, and imbued with southern principles. The territory they occupied was bordered on the east and south by the slave States of Missouri, Arkansas, and Texas. Until their removal west, the Cherokees had lived and owned extensive bodies of land in the two Carolinas, in Georgia, Florida, Alabama, and Tennessee. The home of the chief was in the shadow of Lookout Mountain, on the spot subsequently the theater of some of the grandest military operations of the war.

The Cherokees were in advance of all the tribes of Indians in civilization and material prosperity. They had a well-organized government, conducted by themselves, a code of laws, a legislative council, and a judiciary, modeled upon the plan of the State governments. They had

churches, schools, and seminaries of learning. The country they inhabited, in respect of its latitude, the fertility of its soil, the salubrity of its climate, its noble forests and extensive prairies, and its general adaptation to supply the wants of man, was one of the most favored upon the map of North America. They were an agricultural people. The territory was dotted all over with farms, orchards, and mills. They possessed large herds and flocks of native and improved breeds of cattle, horses, sheep, and swine, and had introduced many labor-saving machines in the cultivation of their farms. They lived in comfortable and commodious houses. This was their condition at the outbreak of the rebellion.

Our relations with this Indian nation ante-dated the national Constitution. As early as November 28, 1785, at Hopewell, on the Keowee, the commissioners of the United States in Congress assembled, gave peace to all the Cherokees, and received them into the favor and protection of the United States of America. And the Indians, for themselves and their respective tribes and towns, covenanted to be under the protection of no other sovereign whomsoever.

Again, in 1791, after the adoption of the federal Constitution, at the treaty grounds on the banks of the Holston, the nation stipulated that it would not hold any treaty with any foreign power, individual State, or with individuals of a State, and agreed to give notice to the citizens of the United States of any designs which they might know or suspect to be formed against the peace and interest of the United States.

Passing by the treaties made with the nation in 1794 and 1798, that at Tellico, on the 25th of October, 1805, those of 1806 and 1807, that of March, 1816, when it ceded its lands lying in South Carolina to that State, those of the following year negotiated by General Jackson, that already alluded to, negotiated in 1819 by Mr. Calhoun, that of 1828, guaranteeing to the Cherokees seven million acres of land west of Arkansas, that of 1833, concluded at Fort Gibson, we come to the important treaty of December 29, 1835. By this treaty, the Cherokees ceded and relinquished to the United States all the lands already claimed or possessed by them east of the Mississippi River. The sixth article of that treaty, which, in its stipulations of protection, is relied on by the claimants as giving them title to the payment demanded in their memorial, is as follows:

Perpetual peace and friendship shall exist between the citizens of the United States and the Cherokee Indians. The United States agree to protect the Cherokee nation from domestic strife and foreign enemies, and against intestine wars between the several tribes. The Cherokees shall endeavor to preserve and maintain the peace of the country and not make war upon their neighbors; they shall also be protected against interruption and intrusion from citizens of the United States, who may attempt to settle in the country without their consent; and all such persons shall be removed from the same by order of the President of the United States. But this is not intended to prevent the residence among them of useful farmers, mechanics, and teachers for the instruction of Indians according to treaty stipulations.

When the war of the rebellion occurred, John Ross, the principal chief of this nation, assumed, on behalf of his people, an attitude of neutrality between the contending forces. He planted himself upon the treaty stipulations existing between his nation and the United States. In the overtures made to him by the emissaries of the Confederate States, his answer was substantially that neutrality was the course suggested by policy and dictated by law, and ought to give no ground of complaint to either side; that their country's institutions were their own, and however small and humble, as sacred and valuable to them as those of a powerful State; that they had done nothing to bring about the conflict and were unwilling to become its victims, and that he and his people

were determined to do nothing that should furnish a pretext to either of the contending parties to overrun their country and destroy their rights. This position of neutrality he continued to maintain until late in August, 1861. But Mr. Ross was not careful to conceal his and his nation's sympathies for their white brethren in the southern States growing out of their common origin and similar institutions. In a letter dated the 17th of June, 1861, to General Ben. McCulloch, commanding troops of Confederate States at Fort Smith, he says:

The Cherokee people and government have given every assurance in their power of their sympathy and friendship for the people of Arkansas and of other Confederate States, unless it be in voluntarily assuming an attitude of hostility toward the government of the United States, with whom their treaties exist, and from whom they are not experiencing any new burdens or exactions.

His feelings at this period were no doubt the same they were at a later date when, in a council with his people, after the disastrous news of Bull Run reached that distant section of country, and the success of the rebels at Wilson's Creek was known, he told them he was and always had been a southern man, a State's-rights man, born in the South, a slaveholder; that the South was fighting for its rights against the oppression of the North, and that the true position of the Indians was with the southern people.

The council at which this speech was made was held on the 21st of August, 1861, at Tahlequah, at which four thousand Cherokee males were present. Under the inspiration of their chief, they were unanimously in favor of abandoning the United States, and in favor of joining the confederacy.

In a letter which John Ross wrote on the 19th of December, 1861, to Opothleyoholo and others of the chiefs and headmen of the Creek nation, he alludes to this mass meeting, and congratulates himself upon his efforts to unite the hearts and sentiments of the Cherokee people as one man, and he declares that they had proclaimed in favor of forming an alliance with the Confederate States. His advice to these representatives of the Creek nation is that all the red brethren should be united among themselves in the support of their common rights and interests by forming an alliance of peace and friendship with the Confederate States of America.

On the 7th day of October, 1861, a treaty of friendship and alliance was made and concluded between the Confederate States of America, represented by Albert Pike, their commissioner, and the Cherokee nation of Indians, represented by John Ross, the principal chief, and others, under the authority conferred by the general convention before spoken of, which assembled on 21st August. By the first article it was stipulated that there should be perpetual peace and friendship, and an alliance, offensive and defensive, between said Confederate States and all of their States and people, and the Cherokee nation and all the people thereof. By the second article the Cherokee nation of Indians acknowledged itself to be under the protection of the Confederate States, and of no other power or sovereign whatever; and stipulated and agreed with them that it would not thereafter contract any alliance, or enter into any compact, treaty, or agreement with any individual State or with a foreign power.

In the 3d article, the Confederate States, having accepted the protectorate, solemnly promised the Cherokee nation never to desert or abandon it; and that under no circumstances would they permit the northern States or any other power to overcome them and sever the Cherokees from the confederacy; but that they would, at any cost and

all hazards, protect and defend them, and maintain unbroken the ties created by identity of interests and institutions, and strengthened and made perpetual by that treaty.

On the 28th of October, 1861, the Cherokee national council adopted a declaration of the causes which had impelled them to unite their fortunes with those of the Confederate States. This declaration was approved officially by John Ross. No manifesto issued by a southern State was more false in its recital of imaginary wrongs, more grossly unjust in its criticism of the manner in which the government had sought to put down the rebellion, than is this state paper bearing the signature of Mr. Ross. The committee subjoin a paragraph:

Free speech and almost free thought became a crime. The right to the writ of *habeas corpus*, guaranteed by the Constitution, disappeared at the nod of the Secretary of State or a general of the lowest grade. The mandate of the Chief Justice of the Supreme Court was set at naught by the military power, and this outrage on common right approved by a President sworn to support the Constitution. War on the largest scale was waged, and immense bodies of troops called into the field in the absence of any law warranting it, under the pretense of suppressing unlawful combinations of men. The humanities of war, which even barbarians respect, were no longer thought worthy to be observed. Foreign mercenaries and the scum of cities and the inmates of prisons were enlisted and organized into regiments and brigades, and sent into southern States to aid in subjugating a people struggling for freedom, to burn, plunder, and to commit the basest of outrages on women.

The conclusion of this remarkable declaration is as follows:

Obeying the dictates of prudence and providing for the general safety and welfare, confident of the rectitude of their intentions and true to the obligations of duty and honor, they accept the issue thus forced upon them, unite their fortunes now and forever with those of the Confederate States, and take up arms for the common cause; and, with entire confidence in the justice of their cause, and a firm reliance upon Divine Providence, will resolutely abide the consequences.

It would seem scarcely open to doubt what were the true sentiments of the man who sanctioned with his name the statements made in this paper.

It is pretended now, and it is upon this theory that the claim is urged by the memorialists, that John Ross was wholly insincere in subscribing to these atrocious sentiments and statements; that he was acting under duress in calling the mass convention of his people and speaking to them as he did, in entering into the treaty and then publishing in the paper just quoted from the reasons and justification of the nation for withdrawing from all its treaty stipulations with the United States.

The memorialists ask Congress to believe that John Ross had a loyal heart, animated with patriotic sentiments toward the United States, and full of zeal for its success in blotting out the Confederate States at the time he gave his official signature to the treaty and declaration above referred to.

The evidence of the commissioner of the rebel government who negotiated this treaty, Albert Pike, is pertinent upon this question. On the 17th day of February, 1866, he addressed a letter, characterized by great ability and seeming truth and fairness, to the Commissioner of Indian Affairs. He was moved to this by seeing the memorial of the Cherokees of the Ross party, claiming to have been loyal during the war, as well as the desire of the commissioner to possess the facts. The letter is long and circumstantial. He gives an account of the time and manner of negotiating treaties with all the southern tribes of Indians. In speaking of the conduct of John Ross at the time of the treaty with the Cherokees, he says:

I protest that I believed Mr. John Ross, at this time and for a long time after, to be as sincerely devoted to the confederacy as I myself was. He was frank, cheerful, earnest, and evidently believed that the independence of the Confederate States was an

accomplished fact. I should dishonor him if I believed that he then dreamed of abandoning the confederacy or turning the arms of the Cherokees against us in case of a reverse.

General Pike further testifies that in March, 1862, he paid Lewis Ross, the treasurer of the Cherokee nation, in the chief's house and presence, the money agreed to be paid them by treaty, \$70,000 in coin, and among other sums, \$150,000 in confederate treasury notes, loaned the nation.

There is another significant fact stated in this letter of General Pike, and it is this: He entered the Indian country in May, and left it in October. For five months he traveled and encamped in it unprotected by white troops, treating with the different Indian tribes, his express mission being to attach them by treaties to the Confederate States. He says, significantly, that if there had been any loyalty among the Indians he could not have gone a mile in safety.

He scouts the idea that John Ross and the Indians made the treaty through threats or compulsion. He says he dealt fairly and openly with all the Indians, using no threats, or force, or compulsion with any of them; that the loyal Cherokees joined them because they believed the confederates would succeed, and left them when they thought they would not, and in conclusion he says: "And if any men voluntarily, and with their eyes open, and of their own motive, acceded to the secession movement, it was John Ross and the people whom he controlled."

In the summer of 1865, a commission was designated by the President of the United States to negotiate treaties with the Indians in the southwest. It was composed of men eminent in civil and military life. D. N. Cooley was president, and his report to the President will be found on page 296 of the Report of the Commissioner of Indian Affairs for the year 1865. This commission refused in any manner to recognize Ross as chief of the Cherokee nation, and their objection was founded on his bad faith in seducing away his people from their allegiance to the United States, his warm and active sympathy for the rebel cause during the war, and his then subtle efforts to dissuade the loyal Cherokees from returning to their allegiance. They denounced him as still at heart an enemy of the United States, and disposed to breed discord among his people. (See the statement of the commission made September 15, 1865, page 304 of the above report.)

The committee have examined the apology made for Mr. Ross, in the "communication from the delegation of the Cherokee nation to the President of the United States, July 31, 1866."

They complain of the deposition of the chief, and the false accusations on which it was made. The document is interesting, ingenious, and able, but it fails to convince the committee that Mr. Ross's sympathies were not wholly on the side of the South. He adhered to the treaty stipulations of his nation with this government just so long as in his crafty and politic mind it was prudent to do so, and no longer. There is a most significant connection between the reverses of the Union arms at Manassas and Wilson's Creek and the mass meeting of August 21, 1861, and the culmination of his defection in the treaty of October 7, 1861. When apparently all hope of the government putting down the rebellion is gone; when reverse has followed reverse on the one side, and brilliant successes have followed the efforts of the rebels to destroy the government and Union; when Heaven itself seems to smile on the bad cause, and loyal hearts are most depressed; at this juncture, so well calculated to draw out the true sentiments of the heart, John Ross gave no uncertain sound. He was radiant with sympathy for the rebels, open to proclaim his opinion that their cause was just, and active to proffer the co-operation of his nation.

If, as is claimed, all these demonstrations of sincerity were hollow and deceptive, then all signs fail by which men's motives are judged. If we may not trust his words and conduct then, how shall we trust them when the scales are turned, and it becomes evident to all far-seeing men that the rebel cause must at no very distant day collapse. When he entered into the treaty of October, 1861, no important successes had been achieved. When he allowed himself to be captured by our troops, and the archives of the Cherokee government to be transported North, in the summer of 1862, the battles of Pea Ridge and Prairie Grove, of Fort Donelson, Shiloh, and Corinth had been fought; Island No. 10 and New Madrid had been captured; Columbus had been abandoned by the enemy, and New Orleans was in our possession. The rebel fleet on the Mississippi at Island No. 10 and Memphis had been captured or destroyed. The tremendous blows struck all around the Indian country in the southwest had convinced the most sceptical speculator upon the chances that the government was in earnest, and possessed both the will and power to put down the rebellion.

The friends of Mr. Ross have volunteered generous testimony in his behalf. Lest injustice be done him in this report, the committee append two statements made to the Committee on Indian Affairs in this body while this claim was pending before that committee:

BAPTIST MISSION, POTTAWATOMIE RESERVE,
Near Topeka, Kansas, July 20, 1863.

GENTLEMEN: Finding that the claims of the late John Ross, principal chief of the Cherokee nation, are now before your honorable body, or soon to be laid before it, for losses caused by the war, partly by the rebel forces and partly by the action of the federal troops, I take the liberty respectfully to present a few remarks in regard to his character and his course in relation to the great rebellion.

Having resided among the Cherokees more than forty years, in the capacity of a missionary from the American Baptist Missionary Union and its predecessor, the American Baptist Triennial Convention, I have had opportunities to become acquainted with the Cherokees and their affairs, and among the rest with Mr. John Ross and his able administration of their government. Mr. Ross's uprightness and personal integrity, his intense patriotism and life-long care for his people, and his self-sacrificing devotion to their interests, are facts so well known that to be recognized they have only to be mentioned. Nor less evident were his loyalty to the government of the United States, his faithfulness to the treaties subsisting between them and his people, and his thorough appreciation of the benefits derived to the Indian tribes from the relations established by those treaties.

His detestation of the secession movements was evinced on all occasions; and in particular was it so in his protest against the course of the Indian Agent Cowart, who, in the summer of 1860, went about making seditious speeches, and using his official position to seduce the people from their allegiance, and to diminish their confidence in the United States government as their acknowledged and exclusive protector. Mr. Ross denounced the perfidious course of that man as a flagrant violation of the intercourse laws of the United States, and of the conditions of the Indian treaties.

The first indication of disaffection among the other tribes was met by Mr. Ross with decided discountenance, and by correspondence and deputations he used his utmost efforts to discourage and check their insensate and ruinous course. He reminded them of their obligations to be true to the terms of their treaties; of the quiet and security they had so long enjoyed; the advances they had made in intelligence and respectability, wealth, and comfort, under the protection and fostering care of government of the United States, and that the duties arising out of their treaty relations could not be ignored without involving disastrous consequences.

After the frontier forts had been abandoned, the federal troops withdrawn, all intercourse with the government cut off, and the prospect of protection or assistance appeared to be hopeless, Mr. Ross still continued to resist the emissaries of rebellion of every class and grade, from the rebel commissioner of Indian affairs down to private citizens of Arkansas, by whom he was persistently assailed. He and the loyal Cherokees continued, by protest and remonstrance, to oppose even McCulloch himself with his army until, pressed with a force they could not withstand, they were compelled to yield an unwilling surrender, and for the time to submit to rebel rule. But John Ross and the loyal Cherokees were never rebels; no, not for an hour.

On their first approach the federal forces were hailed by the Cherokees as the harbingers of deliverance from the hated rebel rule, and the young men from all parts of the nation rushed to the standard of their protectors.

Mr. Ross at once espoused the cause he had so earnestly advocated at the commencement of the rebellion, and contributed much to its success in the nation. His sons, also, joined the army, and his eldest son died of injuries received from a long incarceration in rebel prisons.

By his course in the interest of the federal cause Mr. Ross forfeited and lost all his property, and his family have thereby been reduced to want.

I ought to state, also, that in an interview with President Lincoln, at the head of the Cherokee delegation in 1863, at which I was present, Mr. Ross fully and frankly stated to the President the circumstances of their surrender to the overpowering force of the rebellion. To this Mr. Lincoln replied, "Mr. Ross, that will never be charged against you by the government."

In the confidence that the subject will receive the favorable consideration of your honorable body, I am, gentlemen, your most humble and obedient servant,

EVAN JONES.

The honorable SENATE COMMITTEE ON INDIAN AFFAIRS.

WASHINGTON CITY, D. C.,

January 24, 1869.

SIR: I herewith transmit, in brief, a statement of the claim of John Ross, deceased, late principal chief, Cherokee nation:

1. By its treaties with them the United States were bound to protect the people of the Cherokee nation. When the war broke out, all the forts in the Indian Territory were abandoned, and the people left to the mercy of the insurgents, as it was deemed at that time impossible to maintain so extensive a line.

2. Overrun by overwhelming force, Mr. Ross temporized, in hopes to save his people and keep them from being destroyed by war. Early in 1862, a division of the federal army, under Colonel Weir, entered the country. Mr. Ross, by messengers, kept us fully posted as to the condition of affairs. I was ordered by Colonel Weir to proceed to his house and assure him of protection, and that we designed to remain, and would endeavor to hold the country. I brought back with me twelve hundred armed and mounted Cherokees for our service, two companies of these being John Ross's body-guard, which I swore into the service in his presence. His three grown sons entered the service as private soldiers. In addition, he personally informed me where the enemy had ammunition stored, which I blew up, as I could not take it away.

3. Shortly after the return to the camp on Grand River, there was a mutiny, headed by Colonel Solomon. Weir was placed under arrest. Solomon retreated out of the country to Fort Scott, leaving the three Indian regiments on the prairie. Mr. Ross appealed to me to move the troops in direction of his place to prevent the enemy moving thither. At the same time instructions were sent me to take Mr. Ross and all the archives or other effects of the nation or these parties, and bring them out, to prevent the enemy from getting them. I moved to Mr. Ross's house. On the 27th of July, 1862, I learned that the enemy were moving part of their forces on me. I moved south, and that afternoon engaged the enemy, defeating them. Next day I moved across Grand River, if possible, to prevent the enemy, now re-enforced by Texas regiments, from crossing the river. While so engaged, Colonel Cloud, under instructions similar to mine, proceeded to Park Hill, and carried the chief and everything he could take, out of the country.

4. The war lasted and was fiercely waged in their country for three years more. Much the greater portion of these people were in our army. Nearly all the destruction of Mr. Ross's property occurred after our troops took possession, partly by raiding parties in our rear, and to a very large extent by our troops, different commands of which were constantly moving through the country. Had Mr. Ross been permitted to remain, he could have saved much of it, but the commanders in 1862 did not deem it expedient to let the enemy capture him.

5. Mr. John Ross's property was at least three times as great as what is now claimed. He was, when I first saw him, living in magnificent style. He was generally reputed to be worth several hundred thousand dollars. His family are now reduced to abject poverty, and have thus been stripped of affluence by the necessities or misfortunes of war. I think it would be very bad policy to strip those who thus efficiently aided us. I say, and I *know*, that, without John Ross's aid, we could scarcely had a man in that country. As it was, the Indian Territory was the line of war which otherwise would have ravaged the State of Kansas.

I would respectfully urge on the committee and the Senate the allowance of the claim, as an act of justice and of expediency, and as what we are required to do by our treaty stipulations to protect them.

I am, with respect, your obedient servant,

WM. A. PHILLIPS.

HON. JOHN B. HENDERSON,

Chairman Indian Committee, United States Senate.

The committee are satisfied that the highly respectable gentlemen who furnished the foregoing statements, while this claim was pending before the Committee on Indian Affairs, are honest in their convictions. Great weight is due to what they say; but the testimony against the loyalty of Mr. Ross is too strong to be resisted. In entering into treaty stipulations with the enemy, in putting his nation under the protection of the Confederate States, in forming with them indeed an alliance, offensive and defensive, and co-operating with them for a whole year, he has forfeited all claim to insist upon the subsisting treaty stipulations with the United States, upon which the memorialists now base their claim for reimbursement. His property has been destroyed in the war, as an incident of the war, and by the rebels; and they were principally moved to this because of Mr. Ross's bad faith in violating the treaty he had entered into with them. Had he faithfully adhered to his treaty engagements with the United States, and because of his fidelity to them sustained these losses, his claim for reimbursement would have stood upon quite a different and higher footing. The committee do not say that even then, however, the government would have been responsible for Mr. Ross's private losses, having exerted its utmost power to prevent the Indian country from being overrun, having employed in good faith all the means at its command to carry into effect its covenants with this people.

Be this as it may, the treaty which he made with the enemy, upon the advice and with the consent of 4,000 male Cherokees, estops him and his legal representatives from asserting the present claim.

The committee further report that they learn from the Commissioner of Indian Affairs that Mr. Ross has received the following sums of money since leaving the Indian country, but not by way of recompense for his losses:

On November 21, 1862.....	\$2,500 00
This was for subsistence and expenses of 10 persons composing his family from August 1, 1862, to January 31, 1863.	
January 8, 1863, he received, on the same account, for three months, from February 1 to May 1, 1863.....	1,250 00
May 1, 1863, he received, on the same account, for 11 persons composing his family, from May 1 to August 1, 1863.	1,368 82
October 15, 1864, he received, for subsistence of 36 persons, refugees from the Indian nation, including his own family, from February 1 to October 15, 1864.....	3,000 00
August 18, 1863, he received, for expenses of Cherokee delegation to Washington City.....	2,368 82
January 26, 1864, he received, for a like purpose.....	2,500 00
December 23, 1864, he received balance allowance to defray the expenses of the Cherokee delegation in returning home	2,500 00
	\$15,487 64

These payments were made in part out of interest due on the Cherokee national fund held in trust by the United States, and in part out of the proceeds of sales of Cherokee school land.

The children of Mr. Ross, as members of the Cherokee nation, of course, are entitled to their share of the funds and lands belonging to it.

The committee therefore recommend that the memorial be indefinitely postponed.